

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

In re:) Chapter
)
) No.
)
Debtor(s)) Judge

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on _____, at _____, I will appear before the Honorable _____, or any judge sitting in that judge's place, **either** in courtroom _____ of the _____, **or** electronically as described below, and present the motion of _____ [to/for] _____, a copy of which is attached.

All parties in interest, including the movant, may appear for the presentment of the motion either in person or electronically using Zoom for Government.

You may appear electronically by video or by telephone.

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and passcode.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and passcode. The meeting ID for this hearing is _____, and the passcode is _____. The meeting ID and passcode can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without calling it.

By: _____

CERTIFICATE OF SERVICE

I, _____, certify [if an attorney]/declare under penalty of perjury under the laws of the United States of America [if a non-attorney] that I served a copy of this notice and the attached motion on each entity shown on the attached list at the address shown and by the method indicated on the list on _____, at _____.

[Signature]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|-----------------|---|--------------------------|
| IN RE: |) | CHAPTER 11 |
| |) | |
| JEFFREY FOSTER, |) | CASE NO. 22-06377 |
| |) | |
| DEBTOR. |) | HON. A. BENJAMIN GOLDGAR |
| |) | |

**AGREED MOTION FOR ENTRY OF AN ORDER GRANTING LIMITED RELIEF
FROM AUTOMATIC STAY PURSUANT TO STIPULATION**

NOW COME Jeffrey Foster (the “Debtor”) and PNC Bank, National Association (“PNC”) (the “Parties”), move this court for entry of an agreed order granting relief from the automatic stay for the limited purpose of allowing the Seventh Circuit Court of Appeals issue its decision in *Jeff Foster v. PNC Bank, National Association*, Case No. 20-1667 (the “Appellate Case”) pursuant to the Parties’ stipulation. In support of this motion the Parties state as follows.

1. The Appellate Case is fully briefed and was argued December 1, 2021.
2. The Debtor and PNC both want the Appellate Court to issue its decision in the Appellate Case and have executed a stipulation evidencing their intent, which is attached as Exhibit A.
3. To the extent the automatic stay of Section 362(a) of title 11 of the United States Code applies as to the issuance of a decision in the Appellate Case, Debtor and PNC respectfully request that the stay be modified for the limited purpose of allowing issuance of that decision.

WHEREFORE, Debtor Jeff Foster and PNC Bank, National Association (“PNC”) request that the automatic stay of Section 362(a) of title 11 of the United States Code be modified to allow the Seventh Circuit Court of Appeals to issue its decision in *Jeff Foster v. PNC Bank, National Association*, Case No. 20-1667.

Date: August 15, 2022.

Respectfully submitted by:

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Counsel for PNC Bank, National Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of August, 2022, a true and correct copy of the foregoing document was served via CM/ECF to all parties authorized to receive electronic notice in this case.

/s/ Marcel C. Duhamel

Marcel C. Duhamel (Ohio Bar No. 0062171)

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
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| IN RE: |) | CHAPTER 11 |
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| |) | |

**STIPULATION AS TO MODIFICATION OF THE AUTOMATIC STAY FOR
PURPOSES OF PERMITTING COURT TO ISSUE ITS DECISION
IN THE APPELLATE LITIGATION**

Jeffrey Foster (the “Debtor”) and PNC Bank, National Association (“PNC”) (collectively the “Parties”) herby enter into this stipulation (“Stipulation”) as follows:

WHEREAS, on June 6, 2022 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code thereby initiating the above-captioned bankruptcy case;

WHEREAS, on April 27, 2012, the Debtor filed a complaint against PNC in the United States District Court for the Northern District of Illinois (Case No. 1:12-cv-03130) alleging claims based on loans that he entered into with PNC for properties located in Illinois and Florida (the “District Court Litigation”);

WHEREAS, PNC moved to dismiss certain claims, and the district court partially granted PNC’s motion;

WHEREAS, after the district court entered its order on the motion to dismiss, only those claims related to the following loans/properties remained: (1) a first lien mortgage on the property at 56 Fiesta Way, Fort Lauderdale, Florida (the “Florida Property”); and (2) an equity line of credit on the property at 6201 Kilpatrick Avenue, Chicago, Illinois (the “Illinois Property”). PNC then filed an answer to the remaining claims and asserted counterclaims against the Debtor seeking

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| EXHIBIT A |
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judgment on the note secured by the Florida Property, judgment on the note secured by the Illinois Property, and foreclosure of the Illinois Property;

WHEREAS, on May 24, 2019, PNC moved for summary judgment on all of the Debtor's claims and on its counterclaims, which the Debtor opposed. On March 25, 2020, the district court entered an order granting PNC's motion for summary judgment. In that Order, the district court entered judgment in favor of PNC on all of Debtor's claims, granted PNC's claim for judgment on the note secured by the Florida Property, granted judgment on the note for the Illinois Property, and granted PNC's request for foreclosure of the Illinois Property;

WHEREAS, on April 22, 2020, the Debtor initiated an appellate case pending before the United States Court of Appeals for the Seventh Circuit (the "Circuit Court") and styled as *Jeff Foster v. PNC Bank, National Association*, Case No. 20-1667 (the "Appellate Case") by filing his notice of appeal appealing the District Court's order related to the Florida Property;

WHEREAS, on June 2, 2020, the District Court entered a judgment of foreclosure and sale on the Illinois Property;

WHEREAS, the Appellate Case was fully briefed by PNC and the Debtor, and on December 1, 2021, the Appellate Case was argued before the Circuit Court;

WHEREAS, on April 27, 2022, PNC filed a Notice of Sale with the District Court indicating that the Illinois Property would be sold in a public sale on June 7, 2022;

WHEREAS, the Debtor's filing with this Court on the Petition Date caused the stay of the sale of the Illinois Property;

WHEREAS, as of the filing of this Stipulation, the Circuit Court has not issued a decision in the Appellate Case.

WHEREAS, the Debtor and PNC both wish to have the Circuit Court issue its decision in the Appellate Case, and wish to confirm the inapplicability of the stay as to such action, subject to the terms set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Stipulation, the Debtor and PNC hereby stipulate and agree as follows:

1. To the extent the automatic stay of Section 362(a) of title 11 of the United States Code applies as to the issuance of a ruling in the Appellate Case, they agree to seek entry of an Agreed Order that the stay is terminated, annulled, and/or modified as is sufficient to permit the Circuit Court to issue a ruling and judgment.

2. The Parties shall retain all rights regarding further relief from the automatic stay with respect to the District Court Litigation, the Florida Property, the Illinois Property, or any other case or property, subject to the filing of a motion with this Court.

3. Notwithstanding Bankruptcy Rule 4001(a)(3) or any other Bankruptcy Rule, or any Local Rule of this Court, this Stipulation and the Agreed Order the Parties seek shall be immediately effective and enforceable upon its execution, and there shall be no stay of execution or effectiveness of this Stipulation and Agreed Order.

4. The Debtor and PNC are each authorized to take such actions as may be necessary or appropriate to implement the terms of this Stipulation and the Agreed Order they seek, including but not limited to filing a copy of such Stipulation and Agreed Order with the Circuit Court..

AGREED TO AND SUBMITTED THIS 15TH DAY OF AUGUST, 2022 BY:

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